in this case said that the Industrial Tribunal was entitled to reject the proposition that more women would be affected, without statistical or other evidence to this effect. Moreover the Tribunal was entitled to find that the 'marginal advantages' to the employers in terms of cost and efficiency in operating one shift of full-time workers rather than two shifts of part-time workers justified the decision to dismiss the part-time workers. (*Kidd v DRG (UK) Ltd* [1985] IRLR)

'*... shall i compare thee? ...*' The keynote speaker at the ANZAAS Forum on Equal Pay was Jenny Acton of the ACTU.

Ms Acton is preparing a 'comparable worth' test case on behalf of nurses to put before the Commonwealth Conciliation and Arbitration Commission. The case is expected to test the scope of the 1972 'equal pay for work of equal value' decision of the Arbitrtion Commission.

Comparable worth cases have been pursued in the United States as a way of testing the pay equity of jobs traditionally occupied by women. Work value scores which use gender neutral assessments such as skill, effort and responsibility are used to measure the relative earnings of employees. For example, in San Jose, California, a comparable worth study of public employees was commissioned which revealed that female dominated occupations were systematically undervalued in comparison to men's, so that, for example, principal clerks (mostly women) earned less than painters (mostly men) even though the clerks job scored higher.

The comparable worth test case will not only test whether the 1972 Equal Pay Decision embraces comparable worth. It will also test the application of the Commonwealth Sex Discrimination Act 1984 to proceedings before the Conciliation and Arbitration Commission.

pay increase for nurses. Meanwhile the *Australian* reported on 1 October 1985 that the Victorian Government will offer nurses pay rises of 40 per cent – up to $150 per week. Victoria has a shortage of between 500 and 1000 nurses in the public hospital system. New South Wales has even more vacancies and it and other States have been forced to recruit from of overseas. The Royal Australian Nursing Federation is reported to be seeking a flow-on of the increases for nurses throughout Australia.

iron workers. The *Australian* (1 October 1985) reported that 34 female iron workers succeeded in an action against Australia's largest company, BHP, for sexual discrimination. The company faces a total compensation payment of up to $2.2 million. The *Australian* reported that their action centred on 55 claims of sexual discrimination filed between 1980 and 1983. Some had been refused employment as production iron workers and had their names placed on waiting lists of up to seven years before re-consideration for employment. Others had been retrenched or threatened with retrenchment on the basis of protective legislation in relation to the lifting of weights exceeding 16 kilograms.

The *Australian* reported that the women had all been rehired by BHP. The case was heard in Sydney by the Equal Opportunity Tribunal headed by NSW District Court Judge Richard Barbour.

odds and ends

■ ***victorian inquiry into sentencing law and practice.*** The Victorian Government recently announced the appointment of Sir John Starke, retired Victorian Supreme Court Judge, as convenor of a Committee to enquire into Sentencing Law and Practice. They will soon be announcing the terms of reference and the other members who will make up the Committee. The Australian Law Reform Commission looks forward to the finalisation of the Committee as they are also working on sentencing for the Commonwealth Government and so look forward to a close productive relationship with the Committee.

■ ***public are the arbiters of morality in the state of excitement.*** It has been reported that with the appointment of Justice John Syme, the Western Australian Licensing Court is likely to take a lesser role in determing the bounds of public taste and morality. This has been welcomed by the business community following the failure of the striptease artists' co-operative, earlier this year, to persuade the Western Australian Government to allow strippers back on the catwalks in the name of jobs and the America's Cup. Justice Syme has warned, however, that the court was prepared to become involved if performers indulged in indecent behaviour. In the light of the recent conviction of Austen Tayshus on obsenity charges and the prospect of similar charges against another comedian, Rodney Rude, the Government has called a conference 'to determine the direction we should take regarding obscenity laws'.

■ ***archibald prize.*** In a decision by Justice Powell of the New South Wales Supreme Court in July, the future of the Archibald Prize seems secure. The annual portrait prize was established in 1919 as a bequest under the will of Jules Francois Archibald, a journalist and co-founder of The Bulletin magazine. The will provided that the prize had to be reassessed within 20 years of the death of the last surviving beneficiary of the will to determine whether it was still a good charitable trust. To do that, the Perpetual Trustee Company (which administered the Prize) had to show that it was educational or otherwise of benefit to the public. Justice Powell found that although it may be that the popularity of portrait painting had declined over the years, those who came 'to stand and stare' must learn something from Archibald prize-winning paintings.

■ ***delays in uk.*** In the last issue, [1985] *Reform* 113, concerns about delays in the administration of civil justice were noted and the major findings and recommendations of two recent Australian reports on the topic were outlined. The concerns do not occupy the minds of Australian lawyers only. In Britain, the Lord Chancellor has established a review of the whole system of civil justice (*Times,* 17 July 1985). It will look at every sphere of the system to find out where bottlenecks occur and why, with the aim of reducing the delay, complexity and cost of litigation. The first stage of the review will involve a fact-finding exercise in relation to personal injuries cases.

The *Times* noted that possible changes might include changes to procedural rules, greater judicial responsibility for case progress, greater emphasis on written submissions, use of diversion mechanisms such as arbitration and conciliation schemes, more extensive pre-trial procedures to establish disputed matters and greater use of new technology to assess the performance of the courts.

The Lord Chancellor, however, has received a reminder that attempts to reduce delays and the work load of the higher courts should not reduce the quality of justice available. A proposal that there should be no appeal from a refusal of leave to bring a case of judicial review against an administrative decision – contained in the Administration of Justice Bill – was roundly criticised in the House of Lords. Lord Rawlinson of Ewell, former Tory Attorney-General, criticised the proposal by noting that the search for speed and efficiency in the courts could not justify 'taking away the essential and very proper rights of individuals to ask the courts to look into what has been done by ministers and the executive.' Lord Denning described the proposal as a 'constitutional monstrosity'. The proposal was also criticised by the Law Society and the Bar. Mr David Calcutt, QC, chairman of the Bar, noted that with the growth in powers of the state and executive, the whittling away of an individual's rights of appeal was not appropriate.

■ ***sex changes.*** Legislation is being proposed in three States, NSW, Victoria and South Australia to regulate sex change operations and allow those who undergo them to have official documents altered.

The proposed legislation – the *Sydney Morning Herald* reported – will provide for sex change regulation boards called 'gender reassignment boards' to consider all applications for sex change operations. Doctors who perform unapproved sex change operations would be penalised.

■ ***criminal law reforms.*** A report recording progress made in 1984 in reforming the criminal law of the Australian Capital Territory was tabled in the ACT House of Assembly on 6 September 1985. It is the second Annual Report of the Criminal Law Consultative Committee for the ACT. The first Annual Report of the ACT Criminal Law Consultative Committee was published in 1983. It described the criminal law in the Territory 'as a small stagnating billabong cut off from the main river of law reform' and described the Territory's criminal law as 'largely inaccessible, neglected, a source of uncertainity and confusion to police, citizens and the judiciary'.

The Criminal Law Consultative Committee is chaired by Mr Justice Kelly of the ACT Supreme Court and was previously chaired by the Committee's co-founder, Justice Michael Kirby. The Committee reports to the Attorney-General and the Minister for Territories. The work of the Committee is principally advisory to other bodies having resources for law reform, particularly the Attorney-General's Department, the Department of Territories, and the Australian Law Reform Commission. However, in small projects the Committee itself makes proposals for law reform which are submitted directly for consideration to the appropriate Minister. Subjects upon which the Committee made recommendations in 1984 include:

- the need for legislation enacted in the Territory to be available to the judiciary, the legal profession, the police and the citizens before it comes into force;
- waiver of the requirement of prosecution consent before indictable matters are dealt with summarily in the Court of Petty Sessions;
- the removal of anomalies regarding special licences as between cases where alcohol and drugs are involved, and other cases;
- the need to give the Court of Petty Sessions power to re-open cases to rectifiy mistakes and omissions in appropriate cases;
- opposing any general policy of imposing costs in matters dealt with summarily;
- recommending that if appeals by way of re-hearing are to be abolished there should be a wide discretion in the appeal court to admit fresh evidence, and expanded pre-trial disclosure and discovery requirements.

Major issues which the Committee gave detailed consideration to during the year included:

- theft;
- sexual offences – both substantive and evidentiary aspects;
- summary offences.

The bodies represented on the Consultative Committee are:

- The Australian Law Reform Commission
- The ACT Supreme Court
- The ACT Bar Association
- The ACT Law Society
- The Attorney-General's Department
- The Department of Territories
- The Australian Federal Police
- The Australian National University
- The ACT Court of Petty Sessions
- The Department of the Special Minister of State
- The Director of Public Prosecutions.

The Annual Report indicates that of 56 recommendations made by the Committee in its first five years, 40 have been adopted and another 10 are currently under consideration.

■ ***court jurisdiction to be clarified.*** When the Standing Committee of the State and Federal Attorneys-General met in Melbourne recently, it was agreed to clarify the jurisdiction of the State courts in those situations where it was uncertain in which State a crime had been committed. The *Sydney Morning Herald* reported that a draft bill had been proposed which would allow any court, State or Federal, to exercise complete jurisdiction over all issues that arise in any one case, whether they arose under State or Federal law.

■ ***ellicott and reform.*** Former Attorney-General and Federal Court Judge the Hon RJ Ellicott, QC opened a seminar about the Ombudsman on 7 September 1985 in Canberra. Mr Ellicott said that since the late 1970's Australia had been going through a period of considerable inertia and law reform. He acknowledged that there had been some significant reforms since then and that all were under consideration, and that there are still supporters of law reform in Parliament and elsewhere:

> However, the pace of law reform has slowed considerably and the inertia that accompanies it reflects the general attitude towards change right across the nation. Our leaders constantly take themselves to the mountain top to glimpse the promised land, but for some reason we remain seated at the base. We never seem to set off. We are a nation afraid to move. Our leaders are conservative and timid about change lest it put them out of power. In this situation law reform is unlikely to become a popular cause with politicians.

Mr Ellicott said that another reason for lack of attention to law reform could be our 'singular pre-occupation' with the economy:

> Ever since the oil crisis hit in 1973/74 economic issues have dominated us. It is perhaps significant that the law reforms that took place after that resulted from activities and thinking that occurred much earlier, in the 60's and early 70's.

Mr Ellicott said that scattered around the country and not only in the political area, but also in judicial and administrative areas are 'mandarins of power' who are reluctant to give way to change:

> Many of them, are conservative people anxious to retain current positions and current attitudes. There are even those who would scrap some of the reforms that have been undertaken – even those [like the Ombudsman] we are discussing today. Because some of these people speak from very high places those who cherish these and other reforms had better be ready to defend them.

Mr Ellicott mentioned in particular family law reform, the Federal Court and Aboriginal land rights. Of the last he said:

> Current attempts to undermine [the right of Aboriginal people to say whether mining took place on their land] can properly be regarded by the Aboriginal people as another act of dispossession. If a white person had taken away by the legislature the right to say whether mining took place on his or her land he or she would regard it as an act of expropriation by the State. To take that right away from the aboriginal people, it having once been given is an act of injustice. But who, among the mandarins in power who supported it are now defending it?

Mr Ellicott described the area of Commonwealth administrative law as being and remaining one of the truly dynamic areas of law reform. But he said that it also was under threat.

■ ***government bodies under review.*** The Institute of Family Studies which, together with the Australian Law Reform Commission, the Human Rights Commission and the Australian Institute of Criminology are under review, has taken the step of lobbying support amongst members of Federal Parliament. The review is being conducted by senior officers of the Department of Finance and the Attorney-Generals Department, together with the heads of the agencies under review. Quoted in *the Age,* Dr Don Edgar, Director of the Institute of Family Studies, said that the Institute welcomed the idea of a review of the Institute's work, but not one by public servants who have no social science background: 'Its absurd' he said. 'My vested interest is in maintaining the Institute. Attorney-

General's vested interest is in making sure they (the Department) don't get cut to favour us. Finance's vested interest is the order to reduce the budget. So there can be no objective assessment of our work" (*the Age*, 21 September 1985). Dr Edgar was quoted as saying 'the major impact of the Institute in its five years of operation had been through a report on the cost of keeping children. The report is now said to be the yardstick for most court decisions on maintenance awards. According to Dr Edgar, another of the Institute's main achievements has been the identification of poverty in lone-parent families. He said that this had given politicians hard data on which to base policies that target people most in need of help. Dr Edgar pointed to the Institute's role generally in providing data as a firm basis for government policies. In the Age interview he pointed to the great mass of detailed statistics and information available to the government in other policy areas such as economics, and the relative paucity of such material in relation to the family.

■ ***law reform.*** The Canadian Law Reform Commission began publishing in March 1985 a newsletter titled *Law Reform.* The aim is to report on 'publications issued, studies undertaken, personnel changes, legislative developments and other matters of interest to provincial, national and international law reformers'. To date, the ALRC has received No 1 and No 2 and in these there is information about the activities of each of the Canadian Law Reform Commissions, in relation to references, publications and legislative implementation. The continued publication of this short but informative newsletter will be useful to the dissemination and circulation of information on law reform both for Canada and the international law reform community. The ALRC looks forward to further issues.

■ ***child welfare.*** The Minister for Territories, Mr Scholes, who has been urged to issue the commission's draft Children's Services Ordinance for public comment, has told the Member for Canberra, Mrs Kelly (Lab) in a letter that he has asked for the ordinance to be brought into effect as soon as possible. The ordinance is based on a 1981 Report by the Australian Law Reform Commission. Mr Scholes has apparently indicated that the Government is giving it 'high priority'. The ordinancem which has been considered by the Government and the House of Assembly, is being redrafted and will be issued for public comment before it is enacted, according to a spokeswoman for the Department of Territories. According to the Canberra Times the final draft of the ordinance was to be completed late this year or early next year, but calls for its enactment have increased. The Commission recommended in its 1981 Report that children should be committed to New South Wales institutions only in special circumstances. According to the Canberra Times report the draft ordinance will include this recommendation. It says that many people, including the ACT Chief Magistrate have criticised the lack of facilities in the ACT for young offenders. (*Canberra Times* 28 September 1985). At present young offenders who are incarcerated are removed to New South Wales and kept in its custodial institutions.

■ ***complaints against police.*** The office of the federal Ombudsman has warned that proposed change to the law would allow 'rotten apples' in the federal police to get away unscathed. The office has said that the changes, to the Complaints Against Police Act, would force the Police Disciplinary Tribunal to apply the criminal standards of proof before an officer could be found guilty of corruption or other offences. According to the Age the federal government agreed to make the changes after pressure from the Federal Police Association. Accordingly to the Ombudsman's office, the move would seriously limit the ability of senior police to stop corruption in the force by making it more difficult to obtain convictions. According to the Age in serious matters for which an officer might lose his job, the tribunal has tended to apply the criminal standard: evidence beyound reasonable doubt. But in minor matters the

tribunal often applies a lower, civil standard of proof: proof on the balance of probabilities. The flexible standard of proof has meant that where the tribunal cannot prove beyond reasonable doubt that a serious offence has occurred, because of lack of evidence, it has been able to prosecute a lesser charge with a lower standard of proof. A spokesman for the Ombudsman's office, Mr Hugh Selby, was quoted in the Age as saying:

> These changes are highly undesirable. The result will bee to give the 'rotten apple' greater opportunities to escape unscathed, even when he has been unmasked. Policemen who have transgressed in minor ways will get off scot free because, whereas we would have been satisfied at a lower standard, we don't have enough evidence to say 'guilty beyond reasonable doubt'.

Mr Selby said that the amendments would give senior police less power to discipline their forces than any other management has. He said a businessman could take civil action against an employee on the balance of probabilities, but this would no longer be possible with the Federal Police. He said that the 'mandatory objectives of getting rid of 'rotten apples' and being seen to demand high standards of conduct have now been compromised'.(*Age,* 18 Septemer 1985).

The legislation on complaints against the federal police is based on two Reports by the Australian Law Reform Commission on that topic, made in 1975 and 1978. In line with the Commission's recommendations the Ombudsman is closely involved in the investigation of complaints against Federal Police. The Commission in its Reports concluded that the civil standard of proof ('on the balance of probabilities') was the appropriate standard. It said that the civil standard was a flexible standard, so that the degree of satisfaction required would depend on the nature of the charge laid. But the Commission said that the criminal standard 'might well put at nothing the power of the tribunal to determine that class of misconduct by police which, whilst warranting criminal prosecution, must be punished if the good order and discipline of the police are to be maintained'.

Mr Selby was also quoted in the same Age article as being highly critical of Federal Police resistance to the use of lineups to identify police guilty of criminal offences. He said this contrasted with the attitude of the Victoria Police, which was seeking the power to require police officers to take part in lineups as an aid to criminal investigation.

■ ***death penalty abolished in nsw.*** NSW became the last jurisdiction in Australia to remove the death penalty from its statute book when the Crimes (Death Penalty Abolition) Amendment Act 1985 and the Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985 were introduced to the legislative Assembly earlier this year. Following debate in April the legislation commenced as from the date of assent namely 15 May 1985.

new reports

Australia

ALRC	: Interim Report on Evidence, 1985. No 26.
	: Discussion Paper on Matrimonial Property Law, 1985. DP 22.
	: Discussion Paper on Evidence, 1985. DP 23.
	: Matrimonial Property Law Research Paper on A Survey of Family Court Property Cases in Australia, 1985. RP 1.
SALRC	: Report Dealing with the Inherited Imperial Law between 1821 and 1836, 1985. No 91.
	: Report relating to claims for Injuries from Toxic Substances and Radiation Effects, 1985. No 87.
	: Report relating to owners or Occupiers of Land and Trespassers on that Land, 1985. No 48.
TASLRC	: Report on Powers of Attorney, 1984. No 39.
	: Report on Fines, 1985. No 41.
	: Report on Private Rights of Access to Neighbouring Land, 1985. No 42.